

## *Managing property properly*

### Trustees Contracting with Third Parties on behalf of the Body Corporate

What is **required** and what are the **possible consequences** when trustees enter into contracts on behalf of the body corporate with third parties?

It is important to draw a **clear distinction** between:

1. When the trustees **transact with the body corporate** and in particular the general meeting, the trustees act as an **organ** of the body corporate. This means that their acts as against the general meeting and the individual members are **regarded as the acts of the body corporate itself**.
2. When the trustees **transact with third parties** the trustees usually act as **agents** of the body corporate. This has the result that the **body corporate is bound by all the acts performed by the trustees** within the scope of their authority.

In terms of **section 39(1) of the Sectional Titles Act 95 of 1986** the trustees, in terms of their actual authority, are empowered to exercise all the powers and to perform all the duties of the body corporate subject to the Act, the rules and any restrictions imposed or directions given by the owners in the general meeting. Any act outside such powers would be invalid. For example in terms of **prescribed management rule 26(2)** the trustees may not make loans on behalf of the body corporate to sectional owners or to themselves.

**Certain decisions** are reserved by the Act or the rules for the owners in the general meeting. For example in terms of **prescribed management rule 33** the trustees may effect **luxurious improvements** on the common property only with the **unanimous consent** of the members of the body corporate. Therefore, the trustees have no authority to contract with a building contractor effect such improvements without first obtaining the unanimous consent of the members.



In terms of **prescribed management rule 27** a document is only valid and binding on the body corporate if it is signed by two trustees or by one trustee and the managing agent. This means that contracts must be signed by two trustees or by one trustee and the managing agent. This does not mean that a trustee who signs the contract is **authorized** to do so as the Act empowers the body of trustees, and not individual trustees to perform the functions and exercise the powers of the body corporate.

**Prescribed management rule 26(1)(b)** empowers the trustees to delegate their powers to one or more of the trustees. A third party cannot assume that such a trustee has the **delegated authority** to conclude the contract. This is also true for the chairperson as **neither the Act nor the prescribed management rules** give the chairperson any special contracting authority. Therefore, the **third party** dealing with an individual trustee and not the body of trustees should make sure the trustee is acting in terms of a delegated authority or that the body of trustees have approved the contract.

If the general meeting wishes to exercise its statutory power to impose **restrictions** on the powers of the trustees to enter into certain contracts on the behalf of the body corporate, it must do so **before the trustees enter into the contract**. The body corporate may, by means of a **resolution passed at a general meeting**, confer the power to a trustee to negotiate any contract on behalf of the body corporate. It is important that two trustees or a trustee and managing agent must sign the contact of the body corporate in conformity with **prescribed management rule 27**. The body corporate could pass a resolution to **give the trustees contractual power** to enter into contracts with third parties.

**The resolution can set out:**

- the names of trustees who may contractually bind the body corporate;
- how many trustees are required to sign the contract;
- whether the managing agent is also required to sign the contract;
- what preliminaries are required;
- monetary restrictions can be made; and
- the types of contracts that the trustee may not enter into.

In this way the **third party is protected** from entering into contracts with unauthorized trustees simply by checking the resolution. The **trustees will also be protected** from being held personally liable on the contract with the third party as their authorization will be held in the resolution passed by the body corporate.

The body corporate or body of trustees may still in appropriate circumstances **ratify** contracts entered into with a third party by trustees who do not have the necessary authority.

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